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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/785,026	
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	First Named Inventor	Yoshihide ITEYA	
	Art Unit	3682	
	Examiner Name	Vinh T. LUONG	
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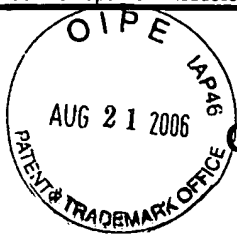
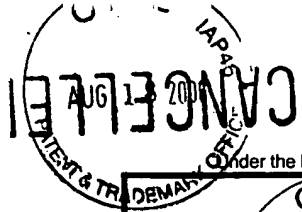
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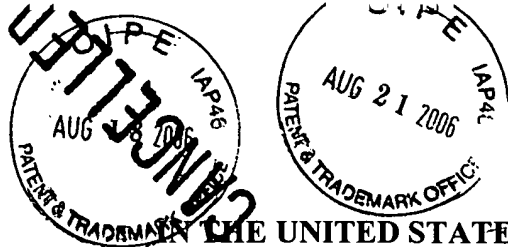
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In Re Application of:	
Yoshihide ITEYA	Art Unit: 3682
Serial No.: 09/785,026	Examiner: Vinh T. Luong
Filed: February 15, 2001	Docket No.: 57139-5045
For: BICYCLE CONTROL DEVICE	

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REPLY TO EXAMINER'S ANSWER

Dear Sir/Madam:

This is a Reply to the Examiner's Answer, mailed on June 20, 2006 in an appeal from the decision dated May 27, 2005, rejecting claims 1 and 3-27 as unpatentable under 35 U.S.C. § 112, ¶ 1; rejecting claims 1 and 3-27 as indefinite under 35 U.S.C. § 112, ¶ 2; rejecting claims 1, 3-6, 9-11, 13-17, 20, 23-25 and 27 as being anticipated under 35 U.S.C. § 102(b) by Abe, U.S. Patent No. 6,073,730 ("Abe"); rejecting claims 7 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Abe in view of Seimitsu, Japanese Patent Application JP 20026893 ("Seimitsu"); rejecting claims 8 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Abe in view of Miyoshi et al., Japanese Patent Application JP 04048521 ("Miyoshi"); rejecting claims

Reply to Examiner's Answer

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Appl. No. 09/785,026
Atty. Docket No. 57139-5045
Customer No. 24574

12 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Abe in view of Hill et al., U.S. Patent No. 5,745,438 ("Hill"); and rejecting claims 18 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Abe in view of Chou, U.S. Patent No. 5,370,412 ("Chou").

I. The Subject Matter of Claims 1 and 3-27 Satisfies the Written Description Requirement of 35 U.S.C. § 112, ¶ 1

The Examiner asserts that the pending claims do not satisfy 35 U.S.C. § 112, ¶ 1.

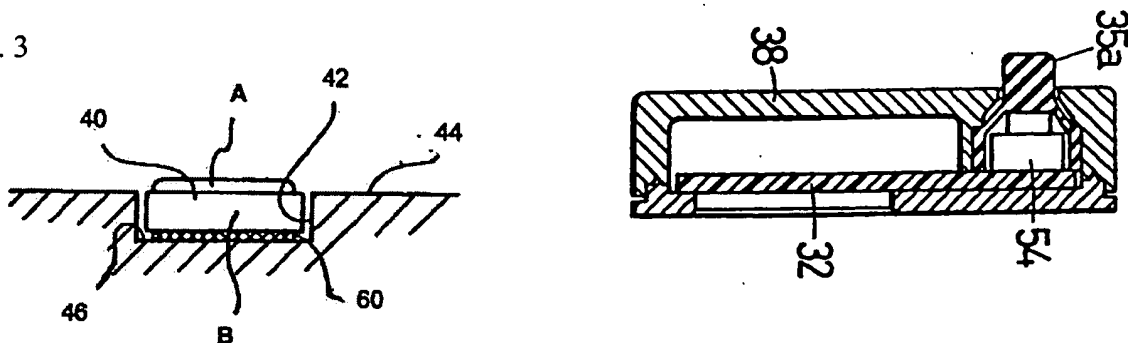
In the Examiner's Answer, the Examiner states that "simply put, since Appellant claims that the button is movable within the recess, therefore, the Statute requires Appellant to provide a full, clear, concise written description of the manner of which the button is movable within the recess." Examiner's Answer at 5. The Examiner goes on to support this statement by stating that "as expressly described in paragraph [0027] of the specification and as shown in Appellant's Figs. 3-7, the button 40 is 'press fit into the switch mounting recess 42 such that the control switch is securely maintained in the switch mounting recess.'" *Id.*

As a point of further clarification, in the Figs. 3-7, operation control button 40 is comprised of more than one part. As is shown below, part B is the stationary part of the button that is press fit into the recess, and part A is the portion of the button that is movable within the recess. In some of the embodiments described in the application, part B is referred to as the outer casing 48 (see, e.g., Figs. 4-5). Dictionary.com defines *button* as "an electrical switch operated by pressing a button; the elevator was operated by push buttons." Accordingly, one of ordinary skill in the art would readily recognize that button 40 includes a push button portion (part A below) and an outer casing that is immovable during operation of the switch. The Examiner is arguing that "the bottom surface 46 of the recess 42 acts as a stopper to stop the movement of the button 40," and that "if the button 40 is moved downwardly within the recess 42, the button 40 would destroy the bottom surface 46 of the recess 42." *Id.* Appellant concedes that once the button 40 has been mounted in recess 42 that part B (or outer casing 48) of the button does not

move. However, part A does move and is therefore "movable," and the Examiner has not provided any arguments contrary thereto.

Furthermore, the Examiner all but concedes that button 40 contains more than one part, one that moves, and one that is stationary. In the Answer, the Examiner states, "In fact, Fig. 11 of Abe is strikingly similar to Appellant's Fig. 3. The button 35a/54 is transparently movable within the recess." Examiner's Answer at 9. As can be seen below in the comparison of Fig. 3 of the present application and Fig. 11 of Abe, the two parts of button 40 are "strikingly similar" to the two parts of component 54 of Abe, which the Examiner admits is "movable." One of ordinary skill in the art would readily recognize this. Accordingly, it can be concluded that part A of operation control button 40 is movable. However, although Abe teaches a movable button, Appellant still disagrees with the Examiner's arguments with respect to the 102(b) rejections (discussed below) that the movable button is in a "recess" as is presently claimed.

FIG. 3



Lastly, in view of the arguments set forth above, Appellant contends that the Examiner still has not articulated any reason why one of ordinary skill in the art would not understand that Applicant's original application described a control button that is movable in a control switch recess. Thus, the rejection is improper and should be withdrawn.

II. The Subject Matter of Claims 1 and 3-27 is Definite Under 35 U.S.C. § 112, ¶ 2

The Examiner next contends that Claims 1 and 3-27 are indefinite under 35 U.S.C. § 112, ¶ 2. "If one skilled in the art would understand the bounds of the claim when read in light of the specification, then the claim satisfies section 112 paragraph 2." Exxon Research and Engineering Co., v. U.S., 265 F.3d 1371, 1375 (Fed. Cir. 2001). The pending claims recite a control button that is connected to a control device and *movable* within a recess defined in the device. According to the Examiner, "the claims at issue are imprecise because the specification and the drawings show that the claimed button is not movable within the recess." Examiner's Answer at 8. However, as stated above, the specification and drawings do not show that the claimed button is not movable. On the contrary, as is discussed above, the drawings show that button 40 includes a stationary portion (outer casing 48) and a movable portion. Therefore, they meet the definiteness requirement of 35 U.S.C. § 112.

III. The Subject Matter of Claims 1, 3-6, 9-11, 13-17, 20, 23-25 and 27 Is Not Anticipated by Abe Under 35 U.S.C. § 102(a)

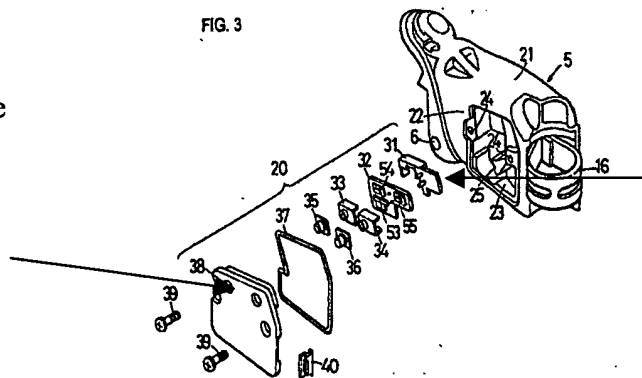
The Examiner asserts that claims 1, 3-6, 9-11, 13-17, 20, 23-25 and 27 are anticipated by Abe under 35 U.S.C. § 102(b). At the outset, in response to Appellant's argument that Abe is not prior art under Section 102(b), the Examiner states that "Appellant's heading states 'The Subject Matter of Claims 1, 3-6, 9-11, 13-17, 20, 23-25, and 27 Is Not Anticipatd by Abe Under 35 USC 102(a). Therefore, Appellant *de facto* acquiesces that Abe is prior art under Section 102(a)." Examiner's Answer at 8. However, this clearly was a typographical error by Appellant. In all other instances, Appellant refers to Section 102(b). Accordingly, Appellant does *not de facto* acquiesce that Abe is prior art under Section 102(a). Therefore, Appellant reiterates its argument that Abe is not prior art under Section 102(b).

Moreover, as stated previously, Abe does not to disclose or suggest each of the limitations of the rejected claims, and therefore, cannot anticipate them. Appellant disagrees that

claim 1 is "fully met" by Abe. The Examiner contends that "Appellant's contention that the top surface of the casing does not define a recess as claimed is unsupported by the substantial evidence presented in Fig. 11 of Abe." Examiner's Answer at 9.

Abe's device does not include a top surface that defines a recess having a connected bottom and sidewall. Dictionary.com defines a recess as "An indentation or small hollow." The Examiner attempts to show that Abe's casing 38 and layer 32 combine to form a recess. However, claim 1 specifically states that the recess is defined in the top surface. At most, the "top surface" or casing of Abe's device defines a bottomless hole or a through hole as is shown in Fig. 3 of Abe.

Abe's "switch top casing" 38 has several *through-holes*. However, its top surface does not define a recess having a bottom wall *connected* to side walls.



The Examiner contends that "switch bottom case" 31 is a "bottom wall" of Abe's "recess."

Fig. 11 of Abe does *not* teach a recess (an indentation or small hollow) defined in the top surface of casing 38, as is presently claimed. The top surface or casing 38 does not *define* a recess that has a bottom wall. Instead, the "bottom wall" identified by the Examiner is a separate component—switch bottom case 31. Thus, Abe does not disclose the features of Claim 1 and cannot anticipate it or the remaining claims depending from or grouped with it.

IV. The Subject Matter of Claims 7 and 21 Is Not Obvious Under 35 U.S.C. § 103(a) Over Abe In View of Seimitsu

The Examiner has rejected claims 7 and 21 as obvious over Abe in view of Seimitsu. Claims 7 and 21 depend from claims 6 and 20, respectively, and they further recite the attachment of the claimed switch in the switch mounting recess by an adhesive. The Examiner has applied Abe in the same manner described above for claims 1, 3-6, 9-11, 13-17, 20, 23-25 and 27. As such, claims 7 and 21 are allowable for the same reasons that claims 6 and 20 are allowable over the prior art of record.

As stated previously, the rejection is further improper because Seimitsu is non-analogous art, and its combination with Abe is not motivated or suggested by the prior art. In the Answer, the Examiner contends that Seimitsu is analogous art to Abe because "the attachment of the switch and ther recess is the particular problem." Examiner's Answer at 10. Appellant disagrees. In the claims, Appellant is concerned with providing a bicycle switch assembly. As stated previously, "In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In Re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992). Seimitsu concerns the use of an adhesive to fix a vibration damper to a transparent base used in the liquid crystal panel of electronic devices such as a clock and telephone. It does not address control switches or techniques for mounting or attaching them.

The Examiner further contends that "Appellant, Abe and Seimitsu faced the same problem of attaching two members together." Examiner's Answer at 11. However, Abe did not face such a problem. In Abe, the alleged button is simply affixed in place. No mention is ever made of there being any problem with affixing the button in its desired location. Indeed, the Oetiker court rejected an examiner's contention that garment fasteners were reasonably pertinent to the applicant's problem of fastening hose clamps, *Id.* at 1447, even though one could broadly

characterize each of them as related to connecting discrete articles. Such a scenario is directly analogous to the present rejection. Here too, the problem of attaching vibration dampers to phones or clocks bears too little relation to the problem of attaching switches to bicycle control devices to be "reasonably pertinent." One of ordinary skill in the art would not look to the field of electroluminescent packaging structures to solve the particular problem presented when affixing the control switch in the switch mounting recess. Once again, Appellant reiterates that combining Seimitsu with Abe is improper.

Lastly, the Examiner contends that because Abe mentions fusing various parts together by ultrasonic fusion that "Abe implicitly does suggest the use of the adhesion via the ultrasonic fusion." Id. First of all, ultrasonic fusion is not the type of adhesion that is contemplated by Appellant. Secondly, nowhere in Abe is it mentioned that the alleged control switch is the component that is ultrasonically fused in place. Accordingly, Abe does not implicitly suggest the use of adhesion by the simple mention of ultrasonic fusion.

V. The Subject Matter of Claims 8 and 22 Is Not Obvious Under 35 U.S.C. § 103(a) Over Abe In View of Miyoshi

The Examiner has rejected claims 8 and 22 as obvious based on the combination of Abe and Miyoshi and has again indicated that Abe is applied in the same manner as for Claims 1, 3-6, 9-11, 13-17, 20, 23-25 and 27. The rejection is improper because the combined references do not teach all of the claim limitations and because there is no motivation or suggestion in the prior art for combining them.

Claims 8 and 22 depend from Claims 6 and 20, respectively, and further recite a hole in the bottom surface of the switch mounting recess and an elastic attachment arm on the operation control button, wherein the attachment arm is press fitted into the hole. Thus, claims 8 and 22 are allowable for the same reasons that claims 6 and 20 are allowable over the prior art.

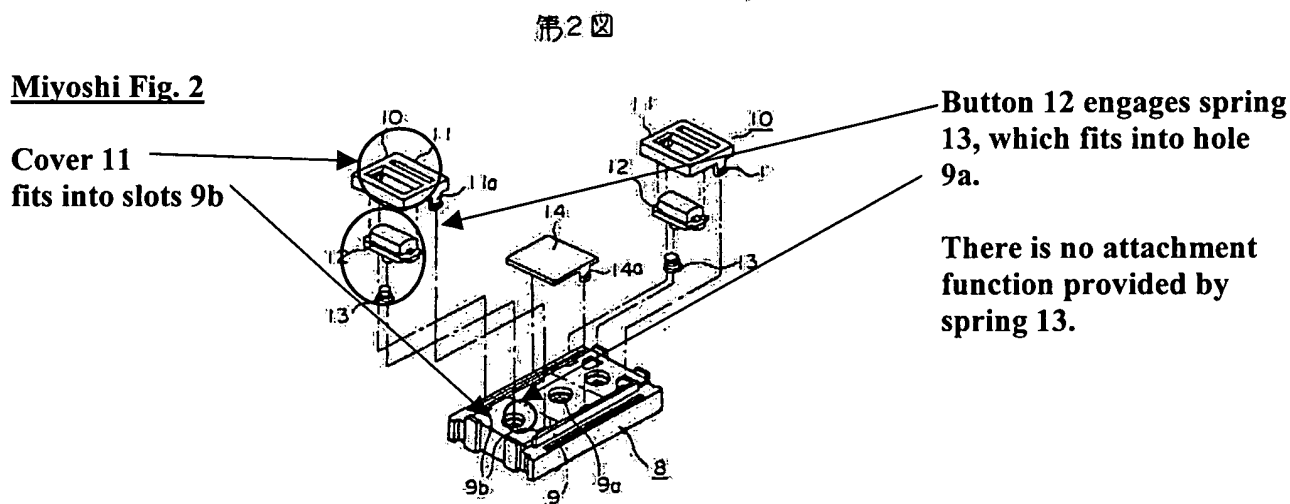
The Examiner contends that "Appellant relied on an *ipse dixit* test that requires the prior art to use the same terminology as the one of Appellant." Examiner's Answer at 12. This is incorrect. Appellant is not arguing that spring 13 of Miyoshi is not an attachment arm because Miyoshi does not use the actual term "attachment arm." Put simply, a spring is not an attachment arm. An attachment arm requires some type of attachment. As shown in Fig. 5 of the application, the attachment arm 62 is attached to and secures outer casing 48 in place. The Examiner contends that "Fig. 2 of Miyoshi shows that the spring 13 is: (a) attached to the button 12." Examiner's Answer at 13. This is incorrect. Fig. 2 of Miyoshi does not show that the spring 13 is attached to the button 12. On the contrary, button 12 is affixed in place by top cover 11 and not spring 13. Spring 13 only rests against button 12 and is only provided to allow button 12 to be biased upwardly. It does not provide any attachment function. Nothing in the translation or the figures indicates that the spring "attaches" button 12 to the base. The spring is not described as performing any attachment function and cannot fairly be characterized as an "attachment arm." Moreover, nothing in the reference indicates that attachment is an inherent feature of the spring.

In addition, the Examiner contends that she "interpreted that Miyoshi teaches... wherein the [alleged] arm is press-fitted into the hole of the recess." Examiner's Answer at 13. Nowhere in Miyoshi is it mentioned that the spring 13 is press-fitted into the hole. On the contrary, if it was press-fitted it would lose its ability to upwardly bias the button 12. Appellant interprets Miyoshi to teach that the spring 13 is only loosely placed in the hole and is neither press-fitted nor attached to button 12.

Furthermore, the Examiner contends that "Appellant's contention that 'nothing in the reference indicates that spring 13 is elastic' on page 21 of the brief is in direct conflict with ordinary and customary meaning of the term 'spring' as defined by standard dictionary." Examiner's Answer at 12. Claims 8 and 22 require the attachment arm to be made of "an elastic

material." Accordingly, Appellant is not arguing that the spring is not elastic. Appellant is arguing that Miyoshi does not teach that the spring 13 is made of an elastic material.

Dictionary.com defines elastic as "Returning to or capable of returning to an initial form or state after deformation." Springs, such as that taught in Miyoshi are typically made of metal, and metal is not typically capable of returning to an initial form or state after deformation. In fact, Appellant argues that if the spring of Miyoshi was made of an elastic material then it could not provide the proper biasing force to allow button 12 to move up and down.



The Examiner's strategy of using hindsight to selectively pick claim elements from the prior art is clearly revealed by the assertion of Miyoshi. In paragraph 2 on page 13 of the Answer, the Examiner attempts to fashion an argument of why Miyoshi teaches a switch mounting recess that defines a bottom wall and which comprises a bottom surface defining a hole therein, as claimed in claims 8 and 22. The Examiner contends that "Appellant overlooked the fact that Figs. 2-4 of Miyoshi show that: (a) the spring/arm 13 is fitted into the hole." Examiner's Answer at 13. Appellant did not overlook this. Appellant understands that spring 13 is fitted

(but not press fitted) into the hole. The Examiner goes on to state "the cover 8 in turn is connected to the base as seen in Fig. 3 or 4. Therefore, the bottom wall of the base 7 is the bottom wall of the hole of the switch mounting recess." Id. However, nowhere does the Examiner mention that Miyoshi teaches a hole in the bottom surface. If the Examiner's assessment of Miyoshi above were correct (which Appellant does not concede), to read on claims 8 and 22, it would require a hole in base 7 through which the alleged attachment arm 13 extends. Therefore, at most, Miyoshi shows a hole. It does not, however, show the claimed structure of a recess having a bottom surface defining a [second] hole. Moreover, Miyoshi does not disclose a recess that conforms to the shape of the outer periphery of a control button, as required by the rejected claims. The button 12 is square and the hole is round.

VI. The Subject Matter of Claims 12 and 26 Is Not Obvious Under 35 U.S.C. § 103(a) Over Abe In View of Hill

The Examiner has rejected claims 12 and 26 as obvious based on the combination of Abe and Hill and has again indicated that Abe is applied in the same manner as for Claims 1, 3-6, 9-11, 13-17, 20, 23-25 and 27. The rejection is improper because the references require modifications that are not motivated or suggested by the prior art in order to obtain the claimed invention. Moreover, Hill is non-analogous prior art, and its combination with Abe and Miike is not motivated or suggested by the prior art.

Claims 12 and 26 depend from claims 11 and 24, and are allowable for the same reasons that claims 11 and 24 are allowable over the prior art. In addition, claims 12 and 26 further recite the threaded engagement of a retention ring in the switch mounting recess. According to the Examiner, "Hill teaches an electrostatic transducer for many industrial applications, such as, flow metering, pipeline inspection, automated welding, and vehicle guidance," and "the bicycle is a vehicle based on its ordinary and customary meaning."

Examiner's Answer at 14. This is clearly a stretch. Appellant once again reiterates that the assertion of Hill is improper because it is non-analogous prior art. Hill does not involve control switches, or structures for retaining them within recesses. Instead, it is directed to an electrostatic transducer. The portion of Hill relied upon by the Examiner concerns the threaded engagement of an O-ring retainer 16 in a transducer housing 11 to secure a sleeve 17. Thus, Hill is non-analogous art, and its assertion against the present application is improper. See In Re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992).

The Examiner has broadly characterized Hill's disclosure as related to the problem of "securing a device within a housing," and on that basis, contends that it is analogous. The Examiner attempts to demonstrate that the reference is "reasonably pertinent" to the particular problem of attaching a movable switch to a bicycle control device or within a control device switch recess, as required by the standard set forth in Oetiker by stating that "Hill is concerned about the particular problem of attaching the member 17 to the recess 32 by retention ring 16." Id. However, as stated above, the Oetiker court rejected an examiner's contention that garment fasteners were reasonably pertinent to the applicant's problem of fastening hose clamps, Id. at 1447, even though one could broadly characterize each of them as related to connecting discrete articles. Such a scenario is once again directly analogous to the present rejection. Here too, the problem of threaded engagement of an O-ring retainer in a transducer housing to secure a sleeve bears too little relation to the problem of securing switches to bicycle control devices to be "reasonably pertinent."

VII. The Subject Matter of Claims 18 and 19 is Not Obvious Under 35 U.S.C. § 103(a)
Over Abe in View of Chou

Claims 18 and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Abe in view of Chou, U.S. Patent No. 5,370,412 ("Chou"). Claim 18 recites a handlebar assembly comprising a bicycle control device that has a top surface defining a switch mounting recess therein, the switch mounting recess having a bottom wall and a sidewall connected to the bottom wall. As explained above, Abe does not disclose this limitation and all the arguments presented above with respect to Abe are reiterated herein. Chou also does not disclose this limitation. The Examiner contends that Chou discloses a cycle computer attached to a handlebar, separate from a control device. However, Chou does not disclose the claimed relationship between an operation control button and a switch mounting recess formed in a bicycle control device's top surface. Thus, the claimed references--even if combined (which would be improper)--do not disclose all of the limitations of Claim 18 and cannot render it obvious. Claim 19 depends from Claim 18, and therefore, is allowable over the combination of Abe and Chou as well.

CONCLUSION

In view of the foregoing, it is respectfully requested that the rejection of claims 1 and 3-27 be withdrawn and that the claims be allowed.

Respectfully submitted,

JEFFER, MANGELS, BUTLER & MARMARO LLP

Dated: August 17, 2006

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